

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Perry Sullivan, #352667

Plaintiff,

vs.

C. Truesdale and the South Carolina
Department of Corrections,

Defendants.

Case No.: 5:20-cv-03333-JD-KDW

OPINION & ORDER

This matter is before the Court for review of the Report and Recommendation of United States Magistrate Kaymani D. West (“Report and Recommendation”), made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 of the District of South Carolina.¹ Perry Sullivan (“Sullivan” or “Plaintiff”), proceeding *pro se* and *in forma pauperis*, brought this action alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. (DE 1.) Plaintiff alleges that Defendant Truesdale violated his constitutional rights on February 23, 2019, “when he physically assaulted Plaintiff Sullivan by grabbing his arm through the food-flap door and twisting and bending it out of joint, and then slamming it in the food-flap door causing bone fracture, swelling and bruising.” (DE 70, p. 2.) Plaintiff also alleges that the South Carolina Department of Corrections (“SCDC”) through Defendant Truesdale, “intentionally or recklessly inflicted severe emotional distress upon [him], or was certain to substantially certain such distress would result from his conduct. . . .” Id.

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

On May 3, 2021, Defendants C. Truesdale (“Truesdale”) and the South Carolina Department of Corrections (“SCDOC” or collectively “Defendants”) filed a Motion for Summary Judgment alleging there are no genuine issues as to any material fact and that the Defendants are entitled to a judgment as a matter of law. (DE 54.) The Magistrate issued a Roseboro Order on May 4, 2021, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir.1975), advising the Plaintiff of the motion and the possible consequences if he failed to respond adequately. (DE 55.) Plaintiff responded to the motion on May 13, 2021, (DE. 60), and Defendants filed a Reply on May 19, 2021.² (DE 61.) Additionally, Plaintiff filed a Sur Reply on May 28, 2021. (DE 62.) The Report and Recommendation was issued on October 20, 2021, recommending denial of Defendant Truesdale’s Motion for Summary Judgment, dismissal of SCDC as a party to this matter, and denial of Plaintiff’s Motion to Supplement (DE 66) as moot. (DE 70.)

No one filed an objection to the Report and Recommendation. In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). The Court must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Upon review of the Report and Recommendation and the record in this case, the Court adopts the Report and Recommendation and incorporates it herein by reference.

IT IS, THEREFORE, ORDERED that Defendants’ Motion for Summary Judgment (DE 54), be denied as to Defendant Truesdale’s entitlement to summary judgment on Plaintiff’s § 1983 Excessive Force claim and Truesdale’s qualified immunity or other defenses.

² In his Response to Defendants’ Motion for Summary Judgment, Plaintiff voluntarily dismissed SCDC as a party to this action.

IT IS FURTHER ORDERED THAT Defendant SCDC is dismissed as a party to this action and Plaintiff's Motion to Supplement (DE 66) is denied as moot.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Joseph Dawson, III". The signature is written in a cursive style with a large, looped "J" and "D".

Joseph Dawson, III
United States District Judge

Greenville, South Carolina
November 16, 2021

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.